

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
November 13, 2002

ITEM: 16

SUBJECT: ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY WITH
MANDATORY PENALTY AGAINST TOSCO MARKETING CO.
– 76 SERVICE STATION NO. 5965 DEWATERING FOR
VIOLATION OF ORDER NO. 2001-96, NPDES PERMIT NO.
CAG919002 (TENTATIVE ORDER NO. R9-2002-0355) (Sherrie
Komeylyan)

PURPOSE: To hold a public hearing to receive testimony from Tosco Marketing
Company, Regional Board staff and interested parties regarding the
proposed mandatory penalties contained in tentative Order No. R9-
2002-0355 (Supporting Document No. 1).

PUBLIC NOTICE: Public notification for this item was provided via the Regional Board
agenda notice for today's meeting. The agenda was mailed out 14
days in advance of today's meeting and has also been posted on the
Regional Board's web site.

DISCUSSION: Complaint No. R9-2002-0203 was issued on August 6, 2002, to
Tosco Marketing Company, 76 Service Station No. 5965 (Tosco)
Dewatering, pursuant to California Water Code Section 13385. The
complaint alleges violations for total residual chlorine and chronic
toxicity which incur mandatory penalties.

Tosco operates a remediation system for the treatment of
hydrocarbon impacted groundwater at a former 76 Service Station in
San Marcos, California. The discharge is regulated under Order No.
2001-96, general waste discharge requirements for dewatering
operations. The general waste discharge requirements require Tosco
to submit monthly, quarterly and semi-annual monitoring reports.
The Regional Board acknowledges receipt of monitoring reports and
identifies violations of monitored parameters in acknowledgement
letters sent to the discharger.

For the period of January – June 2002, Tosco submitted monitoring
reports pursuant to Order No. 2001-96. These monitoring reports
were reviewed by Regional Board staff, and the violations were cited
in staff enforcement letters to Tosco. Complaint No. R9-2002-0203

was sent out to Tosco on August 6, 2002 alleging ten violations, five chronic toxicity violations and five residual chlorine violations for an assessed penalty of \$30,000.

On August 20, 2002 Tosco submitted a letter/report requesting retraction of the Complaint and a reduction of the total number of violations alleged in the Complaint (Supporting Document No. 4). Tosco contended that: (1) only one discharge violation for toxicity should be assessed since only one sample was collected and analyzed, and (2) the presence of chlorine was suspect since it is not introduced or expected in the treatment process.

On August 22, 2002 Regional Board staff met with Tosco representatives regarding the violations contained in Complaint No. R9-2002-0203. The discharger raised numerous objections to the violations of toxicity and residual chlorine cited in the Complaint. Based on the information submitted during the meeting, staff reduced the number of toxicity violations to one violation. Staff also advised the discharger to provide information to support their statement that residual chlorine was only present due to the use of sampling containers with hydrochloric acid preservative. At the time of this report, October 31, 2002, Tosco has not provided evidence to the Regional Board to support the contention that the sampling container preservative caused the violation.

In addition, the chronic toxicity test exceedance reported for April 15, 2002 resulted in five violations of \$3,000 each in the Complaint. The five toxicity violations were assessed because multiple species were used during the test. Tosco representatives contended that since only one sample was taken and tested, that only one discharge violation for toxicity should be assessed. Based on this information, Regional Board staff reduced the number of the chronic toxicity violations from five to one. Consequently, Regional Board staff reduced the monetary assessment for the chronic toxicity violations from \$15,000 for five chronic toxicity violations to one chronic violation. This single chronic violation, however, did not warrant a \$3,000 penalty, because there were not three or more violations in the preceding 180-day period.

Based on the information submitted by Tosco regarding toxicity, Complaint No. R9-2002-0203 was amended and re-issued on September 18, 2002 reducing the penalty amount from \$30,000 to \$15,000 (Supporting Document No. 2).

The discharger has reported a willingness to implement a pollution prevention plan (PPP) in lieu of being assessed a monetary liability by the Regional Board. According to the State Water Resources Control Board guidance, a \$3,000 PPP can be approved in lieu of one serious violation for each six-month period of violation. In this case, the violations cover one six-month period and therefore, one penalty may be deferred totaling \$3,000 for the successful completion of a PPP. The discharger, however, has not provided any proposal for a pollution prevention plan in lieu of the \$3,000 violation.

The discharger is likely to raise two objections about violations in the Complaint. The discharger maintains that the total residual chlorine concentrations in samples taken in March and April 2002 are false positives. The discharger has failed to provide any data supporting the contention that the five sample results were false positives. Also, the discharger believes that only one test result was obtained for total residual chlorine for each of the two sampling events, yet there are a total of five alleged violations assessed by the Regional Board. These five violations are cited due to exceedances of instantaneous maximum, daily maximum, and average monthly effluent limitations. In determining compliance with Order No. 2001-96, Regional Board staff uses one sample result to evaluate compliance with multiple effluent limitations, such as instantaneous maximum, daily maximum and monthly average.

If adopted, tentative Order No. R9-2002-0355 would impose a civil liability in the amount of \$15,000 for a total of 5 violations of the following effluent constituents: total residual chlorine and chronic toxicity.

LEGAL CONCERNS:

None.

SUPPORTING
DOCUMENTS:

- (1) Tentative Order No. R9-2002-0355.
Table 1 - Violation Summary for 76 Service Station No. 5965, January 2002 through June 2002
- (2) Amended Complaint No. R9-2002-0203.
Attachment 1 - Summary of violations
Attachment 2 - Excerpts from monitoring reports (7 pages)
- (3) August 20, 2002 letter from Tosco Marketing Company/Phillips 66 Company.
- (4) Correspondence dated August 21, 2002 from Regional Board staff to Mr. M. Bryan regarding the total residual chlorine violations.

- (5) Correspondence dated August 22, 2002 from Mr. M. Bryan to Regional Board staff regarding the total residual chlorine violations.
- (6) Copies of Chain of Custody Records for the March and April reporting periods.
- (7) Location Map

RECOMMENDATION: Adoption of tentative Order No. R9-2002-0355 is recommended.